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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,381	09/15/2003	Andy Kazmierczak	DJORTH.220A	1613
20995	7590	11/16/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			ALI, SHUMAYA B	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3743	
DATE MAILED: 11/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/663,381	Applicant(s) KAZMIERCZAK ET AL.	
	Examiner Shumaya B. Ali	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/31/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-25 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-12 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 13 and 15-25 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> . |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8/31/2005 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

Regarding, claims 1,2,4,8,15-18,and 22 rejection under 35 U.S.C. 103(a) as being unpatentable over the obviousness of Gaylord US Patent 6,659,971 B2 in view of Jagdat US Patent D 317,840.

Upon further reviewing of the claims, the Examiner considers claims 1,2,4,8,15-18,and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the obviousness of **Gaylord** US Patent 6,659,971 B2 in view of **Jagdat** US Patent D 317,840. The Examiner cannot withdraw the rejection when both references clearly disclose “pillow” as cushioning support. For clarification, the combination of references was used to substitute one cushioning means with another. Additionally, applicant agrees, “the pillow in Jagdat has a similar shape to applicants support pillow” (page 7 lines 28-29). Therefore, the shoulder sling in combination with a pillow as disclosed by Gaylord in view of Jagdat cures for the particular shape/size of the pillow required by the applicant. Since Gaylord and Jagdat both disclose a cushioning mean, it would have been obvious to one of ordinary skills in the art to substitute/prefer one cushioning mean over another for the purposes of providing a cushioning support.

Therefore, applicant's argument for claims 5,6,13,19,20, previously rejected as being unpatentable over Gaylord US Patent 6,659,971 B2, Jagdat US Patent D 317,8405 and in view of Schaefer US Patent 4,598,701, claims 9 and 21 previously rejected as being unpatentable over

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Gaylord US Patent 6,659,971 B2 and Jagdat US Patent D 317,840 in view of Bastyr et al. US Patent 5,407,420, claim 24 previously rejected as being unpatentable over Gaylord US Patent 6,659,971 B2 and Schaefer US Patent 4,598,701 in view of Bastyr et al. US Patent 5,407,42, and claim 14 previously rejected as being unpatentable over Gaylord US Patent 6,659,971 B2 in view of Bastyr et al. US Patent 5,407,420 on the basis of arguments stated to traverse the rejection to claim 1 which generally argues for combination of Gaylord and Jagdat can not be considered.

Regarding, Claims 23 and 25 are rejection under 35 U.S.C. 103(a) as being unpatentable over Gaylord US Patent 6,659,971 B2 in view of Schaefer US Patent 4,598,701, and arguments set forth regarding Gaylord in view of Schaefer on pages 8-10: the arguments are not persuasive, since the Schaefer's reference was used to incorporate the teachings of "visual cue".

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

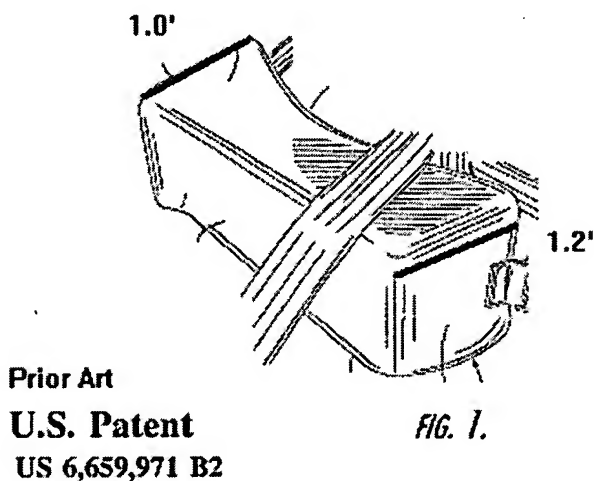
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claim 1, 15, rejected under 35 U.S.C. 103(a) as being unpatentable over *Gaylord US Patent 6,659,971 B2*.**

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1. As to claims 1,15 Gaylord discloses a shoulder sling for supporting a wearer's arm at desired angles of abduction and external rotation, the sling comprising: a support pillow (see fig. 1, cushion 20) including a contoured medial surface (see fig.1 reference object 24) for abutting the wearer's torso (see col.2 lines 44-45), and a lateral surface (see fig.1 reference object 23) for operatively contacting and supporting the wearer's arm; a pouch for receiving and at least partially enclosing the wearer's forearm (see fig.1 reference object 30, col.6 lines 34-35); and a plurality of straps (see fig.1 reference objects 42,46,55,64, and 65) for securing the support pillow and the pouch to the wearer (see col.6. lines 47-50).

2. Gaylord further seem to disclose in figure 1 that a distance between anterior edges of the medial and lateral surfaces is substantially greater than a distance between posterior edges of the medial and lateral surfaces (measurement as indicated in the labeled figure 1 below that the anterior edges of the medial and lateral surfaces is greater than a distance between posterior edges of the medial and lateral surfaces).



Claim Objections

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowable Subject Matter

10-12 are allowed.

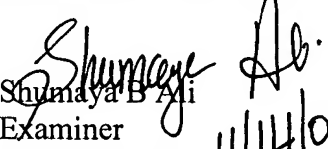
The following is a statement of reasons for the indication of allowable subject matter: as to above allowed claims, the prior art of record does not teach nor render obvious the overall claimed combination of an anti-rotation strap that extends from an anterior edge of the shoulder pad to the support pillow. Additionally the prior arts of record disclose shoulder sling comprising straps that can be used as anti-rotation straps, but do not disclose anti-rotation straps attached to the posterior surface of a pillow. Therefore, the inventions defined in claims 10-12 are novel.

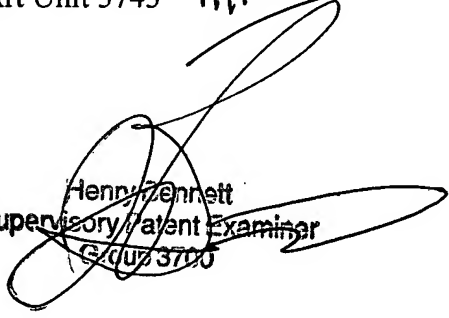
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali
Examiner
Art Unit 3743


Henry Zennett
Supervisory Patent Examiner
G/OU/3743